

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

GTS, INC.

Employer

and

Case 4–RC–19720

TEAMSTERS LOCAL 773, a/w
INTERNATION BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer, a Pennsylvania corporation with a facility located in Bath, Pennsylvania,¹ is engaged in the transportation of ladies' garments and piece goods for customers in Pennsylvania, New Jersey and New York. In addition to its Bath, Pennsylvania facility, herein called the Bath facility, the Employer has a small office located in New York City, herein the New York facility. The Employer picks up garments from contractors located in Manhattan, New York. The garments are loaded onto the Employer's trailers by helpers employed out of the New York facility and are driven to the Employer's Bath facility by drivers employed at the Bath facility who load, then reload and distribute to customers in Pennsylvania, New Jersey and New York. The Petitioner seeks to represent a unit of full time and regular part-time drivers, dock workers and helpers employed at the Employer's Bath facility. The Employer contends that the smallest appropriate unit would also include the helpers employed at the New York facility. There are thirty employees in the petitioned for unit and forty-one in the unit sought by the Employer. The Petitioner is willing to proceed to an election in any unit found appropriate.

The Employer's Bath facility is managed by Operations Manager/Dispatcher Robert Miller. Bill Gothard is the Assistant Dispatcher. The parties stipulated that Miller and Gothard are managerial employees, who should be excluded from the unit. There are 20 drivers; eight dock workers, including Robert Reis and Craig Solt²; and two helpers employed at the Bath facility. In addition to the above personnel, there are clerical employees which include the Employer's payroll clerk, office clericals and computer personnel. Miller, Gothard, the payroll clerk, the office clericals and computer personnel are salaried while the drivers, dock workers and helpers are paid hourly.

Miller works from 8:00 a.m. to 5:00 p.m. He sets up the Employer's daily operations, does all scheduling for the Bath employees, takes incoming calls and communicates with personnel in the field concerning scheduling problems with deliveries and/or pick-ups. Miller is responsible for the hiring of employees at the Bath facility. While supervisors in New York may make recommendations for discipline of the drivers who make pick-ups or deliveries in New York City, Miller is responsible for the decision to terminate or discipline any employee employed at the Bath facility. The drivers are generally assigned to regular routes with four to five drivers assigned to make daily deliveries and pick-ups in New York. The drivers receive no formal training. Rather, after being hired, the drivers are assigned to work on the platform at the Bath facility for two weeks to familiarize themselves with the nature of the Employer's work.

¹ The Employer shares its Bath facility with another Employer known as Silver Line with whom it has common ownership. The Petitioner represents a bargaining unit comprised of the drivers, helpers and dock workers employed by Silver Lake at the Bath, Pennsylvania facility. The two Employers are engaged in similar operations and employees of the Employer sometimes work on accounts for Silver Line and sometimes work side-by-side with Silver Line employees. A single telephone list of the employees of the Employer and the employees of Silver Line is maintained at the Bath facility.

² During the hearing, the Petitioner took the position that Reis and Solt were supervisors who should be excluded from any unit found appropriate. In its Post-Hearing Brief, the Petitioner withdrew its assertion that Reis and Solt are supervisors within the meaning of Section 2(11) of the Act.

The dock workers, who load and unload trucks at the Bath facility, work from 8:00 p.m. to approximately 3:00 a.m. or 4:00 a.m., depending on when the work is finished. The dock workers report to Robert Reis and Craig Solt who answer the telephones and give the dock workers routine instructions in Miller's absence. The helpers receive on-the-job training from the drivers who teach them various techniques in using handtrucks, and hanging and carrying garments

The Employer's New York facility is a one room office located at 221 West 38th Street in the borough of Manhattan. The office is open from 11:00 a.m. to 1:00 p.m. The New York helpers do not report to the West 38th Street office on a daily basis, but spend most of their time in the field. The helpers in New York report directly to the trucks that they are assigned to load or unload. Of the eleven helpers working in New York, eight report to a truck parked at the corner of 38th Street, two report to the truck parked on 36th Street and one reports to the truck parked in Long Island. Merwin Kaplan, who has an ownership interest in the Employer, and Fred Kaplan supervise the New York helpers. The helpers in New York typically meet their supervisor at their respective trucks where they assist the Bath drivers in loading and unloading the trucks as well as delivering and picking up garments to and from the Employer's customers and contractors located in New York. The supervisors in New York are responsible for hiring and disciplining the New York helpers although Miller may make recommendations for discipline concerning their attendance. When calling off for a scheduled shift, the New York helpers are required to contact the Bath facility and speak to Miller or whoever is handling incoming calls. This information is then communicated to the New York supervisors.

The helpers in New York fill out the same application for employment as the dock workers and helpers employed at the Bath facility. However, the New York helpers complete the application process at the New York facility while the Bath employees apply at the Bath facility. There is a separate employment application for drivers. There are no educational requirements for helpers at either location. According to Miller, the only requirements are that the applicant have a strong back and be willing to give an honest days work. The helpers at the Bath facility start at a wage rate of \$8.65, per hour while the helpers in New York start at a wage rate of \$8.60 per hour. The helpers in New York participate in the same 401(k) plan and have the same vacation benefits as the drivers, dock workers and helpers employed at the Employer's Bath facility. As to medical benefits, the helpers in New York and all of employees at the Bath facility are covered by the Employer's health insurance plan with Blue Cross and Blue Shield. The Employer makes a 100% contribution to the plan for all employees. Miller testified that the helpers at the Bath facility work approximately 50 to 60 hours per week while the helpers in New York work approximately 45 to 48 hours per week. New York helper Blaine Schlosser, however, testified that he usually works about 55 hours per week. The Bath employees and the New York helpers are paid straight time for hours worked in excess of 40.

Although some employment records for the New York helpers are maintained in the New York office, the Employer's payroll records and benefits administration functions are centralized in Bath. The Employer's financial officer, Rick Farrell, who works out of the Bath facility, handles questions pertaining to vacation pay and benefit entitlements from employees in Bath as

well as New York. As to vacation requests, Miller handles the requests for the Bath employees while the vacation requests of the New York helpers are handled by the New York supervisors. Neither the Bath employees nor the New York helpers receive written evaluations or punch a time clock. Except for the dock workers whose time is recorded by Reis and/or Solt, the employees at the Bath facility record their own time daily on time sheets. The time sheets for employees at the Bath facility are approved by Miller who gives them to the payroll clerk. The New York supervisors keep a record of the time worked by helpers in New York. These records are reported to the payroll clerk by telephone every Monday morning. When the payroll clerk has the time/attendance information for all of the Employer's employees, the information is called in to AD Computer, an outside company which provides computerized payroll services for the Employer. AD Computer sends the employees' checks back to the Employer. The employees in Bath receive their checks at the Bath facility while the New York helpers pick up their checks at the New York office. The Employer maintains a telephone list of employees at its Bath facility which does not include the names or telephone numbers of the New York helpers.

There is no evidence that any employee ever transferred from the Employer's Bath facility to its New York facility, or vice versa. The New York helpers do not attend meetings with the drivers or other Bath employees. The helpers in New York do not visit or report to the Bath facility for any business purposes.

It is well-settled that a single location unit is presumptively appropriate for collective bargaining. *D&L Transportation, Inc.*, 324 NLRB 160 (1997); *J&L Plate*, 310 NLRB 429 (1993), citing *Dixie Belle Mills*, 139 NLRB 629, 631 (1962); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single location unit can be overcome by a showing of functional integration so substantial as to negate the separate identity of a single facility unit. *Courier Dispatch Group*, 311 NLRB 728 (1993); *Globe Furniture Rentals*, 298 NLRB 288 (1990); *Esco Corp.*, 298 NLRB 837, 839 (1990). To determine if the presumption has been rebutted, the Board looks to such factors as central control of labor relations, including the extent of local autonomy; similarity in employee skills, functions and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any. *Esco Corp.*, supra, 298 NLRB at 839; *Sol's*, 272 NLRB 621 (1984). The burden is on the party opposing a petitioned-for single location unit to present evidence to overcome the presumption. *J&L Plate*, supra, 310 NLRB at 429; *Red Lobster*, 300 NLRB 908, 910-911 (1990). The statute does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be *an* appropriate unit. *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), enfd. on other grounds 190 F.2d 576, 28 LRRM 2364 (7th Cir.1951). Thus, the unit sought by the Petitioner is always a relevant consideration. *Overnight Transportation*, 322 NLRB 723, 723-724 (1996); *Lundy Packing*, 314 NLRB 1042, 1043 (1994); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

Based on the foregoing, I find that the Employer has not overcome the single facility presumption and that a unit comprised of the Employer's drivers, dock workers and helpers employed at the Bath facility is appropriate. Although the Employer's payroll records and

benefits administration functions are centralized at the Bath facility, the New York supervisors exercise the authority to hire, discipline and discharge employees generally without consulting with anyone at the Bath facility. *Bowie Hall Trucking*, supra, 290 NLRB at 42; *Hegins Corp.*, 255 NLRB 1236 (1981). The New York supervisors enjoy substantial autonomy in their day-to-day supervision of the helpers in New York, a factor which supports a single location unit and which is far more significant than the centralization of the Employer's payroll and benefits administration. *Courier Dispatch Group*, supra, 311 NLRB at 728; *Hegens Corp.*, supra, 255 NLRB at 1236. Although there are uniform wages and fringe benefits, the Board has not necessarily found this to be controlling in determining the appropriateness of a single facility unit. *AVI Foodsystems, Inc.*, 328 NLRB No. 59, 4-5 (1999); *Renzetti's Market*, 238 NLRB 174 (1978). The Board has repeatedly found single-location units appropriate despite uniform and centrally devised policies where local managers or supervisors implement these policies with autonomy. *Dattco, Inc.*, 324 NLRB 323 (1997); *D&L Transportation*, supra; *Courier Dispatch Group*, supra, 311 NLRB at 728; *J&L Plate*, supra, 310 NLRB at 429; *Carter Hawley Hale Stores*, 273 NLRB 621, 622 (1984); *Kapok Tree Inn*, 232 NLRB 702, 703-704 (1977). The presumption of the appropriateness of a single location unit in this case is further supported by a lack of significant permanent or temporary interchange between the employees at the Bath facility and the New York helpers. *D&L Transportation*, supra at 162. Moreover, there is significant distance between the Employer's Bath and New York facilities and a limited degree of contact between the Bath employees and the helpers in New York. *Esco*, supra, 298 NLRB at 840; compare *Neodata Product/Distribution, Inc.*, 312 NLRB 987, fn. 7 (1993). Although the New York helpers work side-by-side with four or five drivers from Bath, they have no contact with the remaining drivers at the Bath facility. Aside from speaking to Reis or Solt when calling out for a scheduled shift, the New York helpers have no contact with the dock workers or helpers employed at the Bath facility. Indeed, the helpers in New York have never visited or otherwise reported to the Bath facility.

Based on the foregoing, I find that the Employer has not rebutted the presumption favoring single-location units. Accordingly, I find that the following unit sought by the Petitioner is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time drivers, dock workers and helpers employed by the Employer at its facility located at 7 Allen Street, Bath, Pennsylvania, excluding all other employees, professional employees, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,³ subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

TEAMSTERS LOCAL 773, a/w INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **August 19, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

³ Your attention is directed of Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, DC 20570. This request must be received by the Board in Washington by **August 26, 1999.**

Signed August 12, 1999

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

440-3300
440-6750

jmd:H:\R04COM\DECISWRI\MULTILOC\D0419720.doc